

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NATIONAL ASS'N OF
HOME INSPECTORS, INC.,

Plaintiff,

CIVIL ACTION NO. 06-CV-11957-DT

VS.

DISTRICT JUDGE PAUL D. BORMAN

NATIONAL ASS'N OF
CERTIFIED HOME
INSPECTORS

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendant.

OPINION AND ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL POST-JUDGMENT DISCOVERY

This matter comes before the Court on Plaintiff's Motion to Compel Post-Judgment Discovery filed on April 16, 2008. (Docket no. 53). No response has been filed. This motion has been referred to the undersigned for decision. (Docket no. 54). The Court held a hearing on Plaintiff's motion on June 11, 2008. Present at the hearing was Plaintiff's counsel Mr. Roach. No one appeared for Defendant. This matter is now ready for ruling.

Plaintiff served Plaintiff's Interrogatories and Document Requests Directed to Defendant on February 13, 2008 by the ECF system and by first class mail on Attorney Barbara Mandell of the Dykema Gossett law firm in Bloomfield Hills, Michigan, and on Attorney Mark S. Cohen of the Cohen, Horner law firm in Nederland, Colorado. (Docket no. 53, ex. 1, certificate of service). In addition, Plaintiff's counsel stated at the June 11, 2008 hearing that he sent a hard copy of this discovery request to Nick Gromicko, the sole member of Defendant's board of directors. (Docket no. 8, ex. 2 ¶ 17 (Gromicko's affidavit)).

The status of counsel for Defendant is somewhat confused at this point in the case. Counsel Mandell filed a Notice of Appearance on behalf of Defendant on May 18, 2006. (Docket no. 5). She filed a motion to withdraw as Defendant's counsel on November 15, 2007. (Docket no. 42). On November 16, 2007 Judge Borman entered the Judgment of Dismissal in this action. (Docket no. 44). Plaintiff filed a motion for fees and costs on December 28, 2007. (Docket no. 46). Judge Borman entered Judgment in favor of Plaintiff in the amount of \$10,586.21 against Defendant for reasonable attorney fees and costs on January 25, 2008. (Docket no. 52). Plaintiff served the discovery at issue in this motion in an attempt to collect this Judgment.

When Judge Borman entered Judgment on January 25, 2008, Counsel Mandell's motion to withdraw was terminated without decision. (Docket entry dated 1/25/08). The docket sheet does not reflect that Counsel Cohen entered a written appearance for Defendant, although he has apparently argued the motions heard in this action. (*See* docket no. 42 (Attorney Mandell's motion to withdraw in which she states that Attorney Cohen is "admitted to this District and has handled all motion hearings before the Court")). Counsel Roach confirmed during the June 11 hearing that Counsel Cohen has argued several motions in this court. Finally, on April 23, 2008 after the discovery was served, Counsel Mandell filed a Notice that her representation of Defendant terminated with entry of judgment. (Docket no. 56). The present motion does not require the Court to resolve all of the issues raised surrounding the status of counsel for Defendant.

The record shows that Plaintiff properly served its Interrogatories and Requests for Production on counsel of record for Defendant, Attorney Mandell, on February 13, 2008¹ and also delivered a copy to Nick Gromicko in Colorado. Mr. Gromicko sent to Plaintiff's counsel a

¹ Counsel Cohen was served at this time also.

handwritten response to Plaintiff's Interrogatories and Document Requests. A copy of this response was submitted to the Court by Plaintiff's counsel at the June 11, 2008 hearing. The response by Mr. Gromicko is not signed by him or anyone else, is not dated, and contains many improper objections. Email correspondence between Mr. Gromicko and Plaintiff's counsel (a copy of which Plaintiff's counsel submitted to the Court at the June 11 hearing) shows that as of April 17, 2008 no response had been received by Plaintiff's counsel to this discovery. The Court therefore finds that Defendant did not respond within the 30-day time period allowed under Fed. R. Civ. P. 33 and 34. In addition, the response handwritten by Mr. Gromicko is not signed in violation of Fed. R. Civ. P. 26(g) and 33(b). By failing to timely respond to Plaintiff's discovery requests, Defendant waived any objection to the requests. *See Fed. R. Civ. P. 33(b)(4); Phillips v. Dallas Carriers Corp.*, 133 F.R.D. 475, 477 (M.D.N.C. 1990) (Rule 34 waiver). Plaintiff's motion to compel Defendant and Mr. Gromicko² to provide full and complete responses without objections to Plaintiff's Interrogatories and Request for Production of Documents will be granted. Sanctions will not be awarded at this time.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Compel Post-Judgment Discovery (docket no. 53) is **GRANTED**.

IT IS FURTHER ORDERED that on or before June 30, 2008 Defendant National Association of Certified Home Inspectors and its sole Director Mr. Nick Gromicko shall respond fully and completely without objections to Plaintiff's Interrogatories and Document Requests served on February 13, 2008.

² As Defendant's sole Director, Mr. Gromicko is responsible for the corporation's affairs and would be subject to this Order even if it did not refer specifically to him. *See Electrical Workers Pension Trust Fund v. Gary's Elec. Serv. Co.*, 340 F.3d 373, 382 (6th Cir. 2003).

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: June 12, 2008

s/Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I certify that a copy of this document was served upon Counsel of Record on this date.

Dated: June 12, 2008

s/ Lisa C. Bartlett
Courtroom Deputy
(313) 234-5206